

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEW JERSEY  
Canden Mortgage

MICHEL Duran Plaintiff Pro-se IL  
Atlantic County Justice Facility  
5060 Atlantic Ave.  
Mays Landing NJ. 08330

RECEIVED

DEC 20 2010

AT 8:30 M  
WILLIAM T. WALSH  
CLERK

MICHEL Duran  
Plaintiff

vs

Civil Action No. 1:07-CV-3589(RMB)  
Civil Action

Canden Gary Merline Captain  
James D. Murphy, Principal Clerk  
Vivonne Hickman Case Worker  
John Solor and Atlantic County Justice  
Facility  
Defendants

Plaintiff Answer to Defendant's  
Motion for Summary Judgment  
Against Aramark Correctional Service.

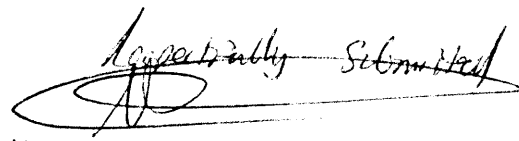
vs

CFC Health Systems LLC and Aramark  
Correctional Service, LLC  
Third Party Defendants

Plaintiff MICHEL Duran hereby answers the motion for Summary  
Judgment of Defendants Aramark Correctional Service. In support of this  
answer Plaintiff incorporates the attached memorandum of law.

Wherefore Plaintiff respectfully Request Defendant motion for Summary  
Judgment to be denied.

Dated December 9, 2010

Respectfully Submitted  


MICHEL Duran Pro Se

United States District Court  
For the District of New Jersey  
Camden Vicinage

MIGUEL Duran Plaintiff Pro-se  
Atlantic County Justice Facility  
5060 Atlantic Ave.  
Mays Landing NJ, 08330  
Plaintiff Pro-se

MIGUEL Duran  
Plaintiff

Civil Action No 1:07-cv-3589  
Civil Action

vs

Order Granting Brief of Opposition of  
Summary Judgment to Plaintiff  
MIGUEL Duran Pro-se.

Warden Gary Neelme Captain  
James D. Murphy, Principal Clerk  
Yonne Hickman, Case Worker John Slog  
and Atlantic County Justice Facility  
and

Warden Gary Neelme Captain James D Murphy  
Principal Clerk Yonne Hickman, Case Worker  
John Slog and Atlantic County Justice Facility  
vs.

EEG Health System LLC and Hammack  
Correctional Services LLC.  
Third parties Defendant

This matter having been brought before the Court on motion of Plaintiff  
MIGUEL Duran Plaintiff Pro-se For an order of Granting the brief of  
opposition of Summary Judgment

The Court having duly considered the non moving party papers submitted  
any opposition, and for other good cause shown.

It is on this \_\_\_\_\_ day of \_\_\_\_\_ 2010,  
ordered that Plaintiff's brief in opposition of Summary Judgment  
is Granted.

It is further ordered that all claims against Defendant Crenshaw  
Correctional Service LLC are hereby Granted.

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Honorable Leene M. Bumbo U.S.D.J.

The within Notice of Motion was:

□ ☐ unopposed

□ ☒ opposed

UNITED STATES DISTRICT COURT  
For The DISTRICT OF NEW JERSEY  
Camden Vicinage

MIGUEL Duran Plaintiff Pro-Se  
Atlantic County Justice Facility  
5060 Atlantic Ave.  
New Brunswick NJ 08901

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MIGUEL Duran

Plaintiff

vs.

Civil Action No.: 1:07-cv-3589 (CMB)  
Civil Action

Warden Gary Morone, Captain  
James D. Murphy, Principal clerk  
Anne Hickman, Case worker John  
Solog and Atlantic County Justice  
Facility

Defendants.

vs.

CEG Health Systems, LLC and  
Arumark Correctional Services, LLC.  
Third party Defendants.

Brief of opposition of Motion For  
Summary Judgement

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To: All Defense Counsel's

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## STATEMENT OF UNDISPUTED MATERIAL FACTS

1. Plaintiff Admit The Fact
2. Plaintiff Admit The Fact In Part Plaintiff also raised in his original claim that he was not provided with adequate food service.
3. Plaintiff Admit The Fact
4. Plaintiff Admit The Fact
5. Plaintiff Admit The Fact
6. Plaintiff Admit The Fact.
7. Plaintiff Admit The Fact.
8. Plaintiff Admit The Fact
9. Plaintiff Admit The Fact In Part. Plaintiff In addition stated that trays was turned back to the kitchen because the trays was not being completed. Plaintiff also stated about the trays being dirty, milk being Spoil, eggs being Spoil, Same food being served repeatedly, Left over food being served, Spoil Salad. Review Aramark Summary Judgment Exhibit E. pg 164-172.

Also Review Plaintiff brief of opposition Summary Judgment Against [ACTF] See Attach Declarations of detainees' statements. In addition Plaintiff stated that he was Poison with the Food Service Provided by Aramark. See Aramark Summary Judgment Exhibit E pg 173-176.

10. The event Surroundings This paragraph are in dispute Plaintiff discovered that the warden had not been given permission from the state
11. Plaintiff Admit The Fact
12. Plaintiff Admit The Fact.
13. Plaintiff Admit The Fact In Part Plaintiff here's not foreshare if Aramark was provided with all Plaintiff medical Records it seems like not.
14. The event Surrounding this paragraph are indispute. Plaintiff claims that Aramark Counsel does not disclose the following sick calls.  
 January 6, 2007 "I have a very serious Fever for two days and I have symptoms dysentery vomiting I need to see the doctor  
 April 4, 2008 "I have my stomach swollen I need something to clean my stomach.

May 9. 2008 I need some antibiotic for infection my through I also have pain in my stomach and I have B&I

July 10 2008 I have bad digester and a B&I pain in middle of stomach and chest I think Is gastritis my stomach is swollen.

July 13 2008 Please I had pain and Burns in my stomach I haven't used the bathroom for 3 day please I need something To clean my stomach

Review ACJP Discovery pg 11, 22, 6, 575, 582, 378, 390.

15. Plaintiff admit the fact In Part Defense Counsel is only providing some of the sick calls and not all of the sick calls
16. Plaintiff admit the fact In Part Defense Counsel is only providing some of the sick calls and not all of the sick calls and is not providing all Interdisciplinary Progress notes for the dates in which several other issues took place.

Review [ACJP] Discovery pg 544, 533,

17. Plaintiff admit the fact.
18. Plaintiff admit the fact.
19. Plaintiff admit the fact.
20. Plaintiff admit the fact.
21. Plaintiff admit the fact In Part Plaintiff and other detainees were all seen in General and the nurse [RN] Sandra Ramblane [RN] stated that all detainees including Plaintiff had been poisoned with Coli Poison. officer George Herbert witness such Incident and also file a Report. with all detainees poisoned. See Amended Summary Judgment Exhibit E pg 175, 176, 177, 178, 179.

22. The event Surroundings This Paragraph are in dispute  
 Atmark Summary Judgment Exhibit E Pg 182 & 9 a. we all was  
 diagnosed
23. The event Surroundings This paragraph are in dispute plaintiff stated  
 that the Food was spoil because it smelled spoil and it taste spoil.
24. Plaintiff Admit The Facts.
25. Plaintiff Admit The Facts.
26. Plaintiff Admit The Facts In Part There was a Report made by  
 a Correctional staff C.O. George Hebert. ACSF defense Counsel  
 stated that they didn't have it according to C.O. George Hebert  
 he made the report and the Report was handed in. the  
 Administration took care of such Investigation
27. Plaintiff Admit The Facts.
28. The event Surroundings This Paragraph are in dispute There was a Report  
 done by officer George Hebert.
29. The event Surroundings This Paragraph are in dispute There was a Report  
 done by officer George Hebert.
30. Plaintiff Admit The Fact.
31. Plaintiff Admit The Fact.
32. Plaintiff Admit The Fact.
33. Plaintiff Admit The Fact In Part. Plaintiff Claims That water doesnot  
 have Calories. If The Food is expanded, ~~Strech~~ stretched, diluted with water  
 Common Sense will lead to figure that the Food has less Calories
34. Plaintiff Admit The Fact In Part. Plaintiff Claims That There is Food  
 That could affect the Liver. Plaintiff should of been place in Diet  
 Food Service.



25. Plaintiff Admit The Fact
36. The event Surroundings This Paragraph are in dispute Plaintiff did  
File Grievances See [ACJF] Discovery pg 377, 378, 390, 389, 81.  
Armark Summary Judgment Exhibit E at 187:25 to 188:18 does not  
Say Plaintiff did not file Grievances See pg 18725 As well I been Filing  
Grievances For This
37. Plaintiff Admit The Fact.
38. Plaintiff Admit The Fact
39. Plaintiff Admit The Fact. In Part trays or handle by detainees and not officers
40. Plaintiff Admit The Fact in Part
41. Plaintiff Admit The Fact.
42. The event Surrounding This Paragraph are in dispute See Plaintiff Brief of opposition  
or Summary Judgment Attach Declarations and statements.
43. Plaintiff Admit The Fact.
44. Plaintiff Admit The Fact.
45. Plaintiff Admit The Fact.
46. Plaintiff Admit The Fact.
47. Plaintiff Admit The Fact.
48. Plaintiff Admit The Fact
49. Plaintiff Admit The Fact
50. Plaintiff Admit The Fact.
51. Plaintiff Admit The Fact.
52. The event Surrounding This Paragraph are in dispute See Plaintiff Brief of  
opposition or Summary Judgment over 10 declarations of detainees
53. The event Surrounding This Paragraph are in dispute See Plaintiff Brief of  
opposition or Summary Judgment over 10 declarations of detainees
54. The event Surrounding This Paragraph are in dispute See Plaintiff Brief of  
opposition or Summary Judgment over 10 declarations of detainees
55. Plaintiff Admit The Fact. In part None of This Inspections  
of Hasep Report was disclose to the plaintiff This is to  
be false Hasep does not or have not made no Inspections in  
[ACJF] Kitchen

56. The event Surroundings This paragraph are in dispute. US Department of Agriculture have not Inspected [ACJF] Kitchen Such Report was not Provided by [ACJF] or Aramark.
57. The event Surroundings This Paragraph are in dispute Plaintiff has not witness to this matter.
58. The event Surrounding This Paragraph are in dispute Plaintiff has not witness to This matter.
59. The event Surrounding This Paragraph are in dispute. Tri-County Termite and Pest Control Denied given Service See Plaintiff Discovery {P<sup>3</sup> 700}
60. The event Surrounding This Paragraph are in dispute
61. The event Surrounding This Paragraph are in dispute
62. The event Surrounding This Paragraph are in dispute See Plaintiff brief of opposition of Summary Judgment attach Declarations
63. Plaintiff admit The fact.
64. Plaintiff Can not dispute This fact
65. Plaintiff Can not dispute This fact.
66. Plaintiff Can not dispute This fact.
67. Plaintiff Can not dispute This fact.
68. Plaintiff Cannot dispute This fact at this time
69. Plaintiff Cannot dispute This fact at this time
70. Plaintiff Cannot dispute This fact at this time
71. Plaintiff Cannot dispute This fact at this time
72. Plaintiff Cannot dispute This fact at this time
73. Plaintiff Cannot dispute This fact at this time
74. Plaintiff Cannot dispute This fact at this time
75. Plaintiff Cannot dispute This fact at this time
76. Plaintiff Admit This fact, But dispute That the milk is Given after due pass date.

77. The event Surroundings This paragraph are in dispute. Plaintiff claims that if the milk is rotated properly and kept in the proper temperature then this would be one way of avoiding Spoil milk.
78. Plaintiff Admit The Fact
79. Plaintiff Admit The Fact
80. The event Surrounding This paragraph are in dispute. Plaintiff was provided with In Complete meals. Three Cold meals and Spoil Food.
81. Plaintiff claims that This event Surrounding This paragraph are in dispute Food Portion at times are very small and very poor
82. Plaintiff Admit The Fact
83. The event Surrounding This paragraph are in dispute The Food are Served by unmedically cleared detainees
84. Plaintiff Admit The Fact In Part The Housing unit are not in Sanitary Conditions
85. The event Surroundings This paragraph are in dispute Trays and Juice Container Comes Consistently dirty Review Plaintiff brief of opposition of Summary Judgment. See attach detainee declaration and statements.
86. The event Surroundings This paragraph are in dispute. Trays and Juice Container are Consistently dirty
87. The event Surroundings This paragraph are in dispute Plaintiff claims that In 2008 over 172 trays were exchange they had holes inside of this trays where water would accumulate and the water would flow into rotten water. [ACTS] and Remarks have hidden this Reports. But C.O George Hebert will testify that Such allegations are Correct.
88. Plaintiff Cannot dispute this at this time
89. Plaintiff Cannot dispute this at this time
90. The event Surroundings This paragraph are in dispute. Plaintiff and 20 other detainees file a Complaint and it was handle to C.O George Hebert
91. The event Surroundings This paragraph are in dispute There is a Report But it was hidden and Concealed C.O George Hebert will testify of this event. and what he witness

92. The event Surrounding This paragraph are in dispute meals at times Comes Cold Consistently.
93. Plaintiff admit This fact In part. at times meals Come Cold.
94. The event Surrounding This paragraph are in dispute Warden Gary Melnie Mer had state Permission he stated he did But upon the discovery a Copy of Such Report and Permission was Requested and it was not disclosed.
95. The event Surrounding This paragraph are in dispute a Cold Sandwich with one cheese, Bologna and Bread. a fruit and a Juice doesnot meet the nutriestriest meal of a daily base.
96. Plaintiff admit This fact.
97. The event Surrounding This paragraph are in dispute There was Several Complaints Filed through trial Correctional officers and detainees will testify that there was Complaints and Grievance Filed.
98. The event Surrounding This paragraph are in dispute Defendant Aramark Correctional Services, LLC summary Judgment shall be denied as a matter of Law

### Legal Argument.

#### A. Summary Judgment Standard

Summary Judgment shall be Granted When all Probative material of Record viewed with all Inferences in Favor of the non-moving Party See United States v. Diebold Inc 369 US 654 655 (1982) *Guns v mundy* 762 F.2d 338, 511 (8th Cir 1985) Inference in Favor of the non-moving Party demonstrate that no Genuine Issues of material Facts exist and that the movant is entitled to Judgment as a matter of Law see Fed R Civ P 56 (c) *Colatz v Catrett* 477 US 317-550 (1986).

In Issue is not whether a Plaintiff will ultimately Prevail but whether a Plaintiff is Entitled to offer evidence to support his Claim It is not the Credibility of witnesses *Cameron v Seitz* 38 F.3d 264, 270 (8th Cir 1994).

Defendant Motion For Summary Judgment shall be denied

B. Aramark Correctional Service may be held liable if they had Personal Involvement In The operation of the Food Service, were aware of such conditions, and had actual knowledge.

Aramark Correctional Service is a Contracted by Atlantic County, who operates at Atlantic County Justice Facility. A Jail that is operating under Atlantic County which is a Subdivision of the State of New Jersey. *Clark v Dynga* 83 NJ. 393, 400 (1980) 183 NJ. Super 137, 144 (App Div 1982) County is a Subdivision of the Government of the State of New Jersey Section 1983 by its own terms provides redress only when States Employees Infringe those Right Secured by the Constitution and Laws of the United States See *Paul v Davis* 474 U.S. 693 - 700-01, 96 S.Ct. 1155, 1160 (1976) *Smith v Spivey* 477 F.2d 1140, 1143 (3rd Cir 1973).

The Civil Right Act of 1871 Includes 42 USC §1983:

"Every Person who under Color of Law of any State ordinance regulation custom or usage or any state or territory Subjects or other Person within Custom or usage or any state or territory Subjects or other Person within the Jurisdiction there of to the Deprivation of any Rights Privilege or Immunities Secured by the Constitution and Law shall be liable to the Party Injured in any action at Law suit in Equity or other Proceedings

Plaintiff claims that Aramark Correctional Service, and ACTJS are responsible to provide Plaintiff with the Food Service Aramark is a Contracted Agency.

Plaintiff claims that Aramark had Personal Involvement In The operation of the Food Service and was aware of such conditions. Plaintiff claims that they had Personal Involvement In the alleged wrong that they had knowledge, Personal direction and actual knowledge and Acquiescence "Rhode v Dellacorte 845 F.2d 1195, 1201 (1988). *Robinson v City of Pittsburgh* 120 F.3d 1286, 1294 (3rd Cir 1997).

In *Churchello v Fenton* 805 F.2d 126 (6th Cir 1986) The Courts taking this view however have found Liability only where there are both 1) Contemporaneous Knowledge of the offending incident and 2) Circumstance under which the supervisors in action could be found to have communicated a message of approval to the offending subordinate. See *OR Pinn v Johnson* 632 F.2d 1696, 1101 (4th Cir 1980) Prison Supervisors Failure to act in term of past incidents may amount to deliberate indifference *Sims v Adams* 537 F.2d 829 (5th Cir 1976)

Plaintiff claims that Aramark had Personal Involvement in the many wrongs doing

under *Rizzo*, The *Rizzo* Court stated that the City officials could not be held liable or compelled to afford equitable relief for violations of Constitutional rights committed by subordinate police officials, unless they had played an affirmative role in the deprivation of those rights. *Rizzo v Goode* 423 U.S. 268 (1976) Aramark may be held liable if they participated in a pattern of violation *Lewis v Hyland* 554 F.2d 93, 98 (3d Cir) cert denied 434 U.S. 931 (1977).

In Aramark Correctional Service Summary Judgment. Counsel states in Statement of Material Facts Paragraph 45.

"Pursuant to the Food Service and Food Service Management Contract Aramark Correctional Services, LLC provided Food Service management to the Atlantic County Justice Facility where Plaintiff Miguel Duran resides. (See the Food Service and Food management Contract attached here to as Exhibit L", see also the Certification of Aramark Correctional Services, LLC Food Service Director Joseph Linnell which is attached here to as Exhibit K")

Plaintiff agree that CFC Health Service, Inc. that a Individual Government Defendant in a civil action must have Personal involvement in the alleged wrongs, Personal Involvement can be shown through allegations of Personal direction of Actual Knowledge and acquiescence *Rhode v Dellacorte* 895 F.2d 1195, 1203 (1988).



Defendant's Aramark Correctional Service: Joe Linnell Director of Food Service, Cynthina Carey-Lon: Employee Rob Lucente, Ken Kellogg, Carl Cauness, Art Westerfield, Pedro Acosta, Joann Hernandez, Jeremy Sinclair, Shawn Burke, Dan Heenan, are persons who were Employee of Aramark Correctional Service a Contracted agency by Atlantic County are to be held liable.

Defendant warden Gary Merline was the warden of the time of the Incident warden Gary Merline is a warden of [DCJF] that is under Atlantic County

Plaintiff claims that Aramark Correctional Service LLC acted deliberate Indifference to Plaintiff's nutritional and dietary needs accordingly All of Plaintiff's claims against Aramark Correctional Service LLC must not be dismissed as a matter of Law.

C. Aramark Correctional Service has violated Plaintiff's  
Eighth Amendment Right of the U.S. CA

Plaintiff has alleged that Aramark Correctional Services, LLC. Failed to provide him with nutritious food during his incarceration, by providing him with Inadequate Food Service as Spoil Food, Spoil milk, Spoil Salad, Incomplete meals, Small Portions of Food, no taste, watery down Food, diluted Food, due to the large Population of inmates, such Food being diluted, adulterated or watered down to serve the excessive number of inmates at the [DCJF] by reducing the cost of the Food being served to the Population.

Plaintiff has been Injured by Defendant's Failure to supply nutritious Food for Consumption at the [DCJF]

N.J.A.C. 10A:31-10.1 Provides that County Correctional Facilities shall provide Nutrition to detainees and inmates that is consistent with "nutritionally recommended Food allowances as stated by the National Academy of Sciences".

Plaintiff Claims That the Food being Served at [ACJF] fails to meet the nationally recommended Food Allowances as stated by the national Academy of Sciences due to the large population of inmates and Food being diluted, adulterated or watered down to serve the excessive number of inmates at the [ACJF]. b4 Reducing the Cost of the Food being served to the Population.

Armark has failed to provide consistently perform such services. Such as Cleaning, Clean Food, Preparations Facilities, clograins, and cleaning Common Areas of which Plaintiff and other detainees would sit and eat there Three meals per day.

Plaintiff Claims that the Food has result to be Contaminated Food. That has transmitted of illness including E-coli gastrointestinal conditions. Plaintiff has personally been affected by such pain discomfort and Contaminated Food

Plaintiff Claims that the eighth amendment of the USCA protects him of "Cruel and unusual Punishment" within the Constitution of America.

The treatment a Prisoner receives in Prison and the Conditions of Confinement are subject to scrutiny under the Eighth Amendment's proscription against Cruel and unusual Punishment *Helling v McKinney* 509 U.S. 31. (1993)

The Eighth Amendment is violated when there is a denial of basic human needs such as Food, clothing, shelter, medical care and reasonable safety. *Helling* 509 at 32.

An Inmate is entitled to a healthy, habitable environment that includes "providing nutritionally adequate food that is prepared and served under conditions which do not present an immediate danger to the health and well being of the inmates who consume it." *French v Owens* 777 F.2d 1550, 1255 7th Cir. 1985



Plaintiff claims that he was deprived of "basic Human need." Such as shelter, food, exercise, clothing, sanitation and hygiene, such denial of Basic Human Need may amount to a eighth amendment of the U.S. CA violations Rhodes v Chapman 452, U.S. 337, 346. (1981)

Plaintiff may prove his violation of Eighth Amendment, and may prove both objective evidence and subjective evidence Farmer v Brennan 511 U.S. 825 (1994); Wilson v Seiter 501 U.S. 294 (1991)

Plaintiff claims that In 2007 there was 28 Grievances filed according to Atlantic County Justice Facility Inspection of 2007 Plaintiff claims that many of the Grievance and Complaint file has been concealed, destroyed or hidden. See Plaintiff brief of opposition of Summary Judgment Attach detainee declarations and statement.

In addition Plaintiff claims that In 2008 approximately August or September, a Complaint was filed and handed to Correctional officer George Hebert who does not denied the Incident that took place where 20 to 30 detainees including the Plaintiff was poisoned with E-coli. Broken water boiling on top of the food, where 172 trays was to be found with wholes inside of them. Plaintiff and detainees were poisoned.

Plaintiff claims that Defense Counsel James T Dugan, and Amark Correctional Facility Counsel denies this ever happening The fact is that there is over 10 detainees stating that Spoil Food is constantly given to ACTF Population See Plaintiff brief of opposition of Summary Judgment Attach detainees declaration and statements

According to ACTF Discovery pg 11, 22, 6, 575 572. Reflects sickness for Plaintiff suffering of Spoil Food, and Inadequate Food Service.

Plaintiff claims That Prison are Required to Serve Food that is nutritious and prepared under clean conditions *Robles v Coughlin* 725 F.2d 12 (2d Cir 1983)

Plaintiff claims That For the 21 month he was detained at Atlantic County Justice Facility he was provided with Inadequate Food Service Food being cold. Review ACJF Discovery pg 378 Food being diluted Review pg 390

Plaintiff claims That This Inadequate Food Service caused Bred indigestion Review [ACJF] discovery pg 544. Plaintiff having Problem with bowel movements. Plaintiff was provided with Pepto Bismol - pg 533.

Plaintiff claims That 21 month of such conditions the Court should Review such matter *Barney v Alsipher* - 143 F.3d 1299, 1311 (10th Cir 1998) Plaintiff claims That he did suffer Physically and Psychological and that Providing Spoil Food and Inadequate Food may have caused Risk, and injury in the future. *Helling v McInney* 509 U.S 25 (1993)

Plaintiff claims That The Inadequate Food Service Forces the detainees who have money to purchase Food at The [ACJF] Food distributor Keefe Commissary, who has a Contract with Atlantic County, as part of the deal of the Contract is That out of all Purchase and ever Purchase detainees made with Keefe Commissary, Atlantic County receives a 40% Percent out of Each Purchase per detainees

Plaintiff claims That The Food Product in Keefe Commissary are 20 to 30 times over the Price of that value of that Item, and This Is the reason of why detainees are provided Inadequate Food Service

[ACJF] warden Gary Merline was notified of the Inadequate Food Service See [ACJF] discovery pg 377, 389, 81.

Plaintiff claims that The Inadequate Food Service is purposely done with the intention to force the detainees to purchase food in Keefe Commissary providing Spoil Food Consistently. small Portion of Food, diluted Food, Cold Food, adulterated watery down Food to serve the excessive number of inmates at the [ACTF] is not negligence, and there conduct is deliberate. Grammark has fail in deliberate indifference to Plaintiff nutritional and dietary needs.

Plaintiff claims that Common Sense will determine that adulterated watery down Food would bring down the 3,200 calories of Food per meal.

Plaintiff claims that he requested a copy of the state permission that according to Warden Gary Merline was given for the state. This permission was never disclose because the State never gave Defendant Gary Merline permission to serve Three Cold meals per day for 45 days.

Plaintiff claims that according to NSAC 10A:31-10.5(a) entitled Serving of meals Prandles Specifically as follows: Three meals shall be provided at regular meal times during each 24 hour period. Two of the meals provided shall be hot meals unless an emergency situation precludes the serving of hot meals. No more than 14 hours shall elapse between the evening and breakfast meals.

Plaintiff claims that providing for 45 days, Three meals per day Bread, Cheese, Bologna, a fruit and a Juice would cause Inflation, and would cause health problem. But also would enforce detainees to buy/purchase at Keefe Commissary.

Grammark Counsel claims that there is nothing in the Plaintiff medical records that disclose Plaintiff complaining of bowel movements please review [ACTF] Discovery #544. Plaintiff Discovery pg 3081

Plaintiff do admit that there is evidence missing that [DCJF] Defense Counsel James T. Dugan, and Aramark Counsel refused to disclose and denied that this evidence exist or that the incident took place.

Plaintiff claims that through the testimony of witnesses, Correctional officer and detainees it will reveal that this incident took place, and that Defense Counsel maliciously hid the evidence.

Plaintiff has demonstrated that a violation of his Eighth Amendment right have occurred, a deprivation of humane conditions of confinement "objectively sufficiently serious enough to pose a substantial risk of harm coupled with "deliberate indifference" to same on the part of Aramark Correctional Services, LLC.

Plaintiff claims that warden Gary Merline fail to supervised and to protect Plaintiff from the food service being so inadequate. According to NSAC 10A: 31-10.1 provides that County Correctional Facility shall provide nutrition to detainee and inmate is consistent with nationally of services.

Plaintiff claims that the food service is made by detainees who are not medically clear, or without the supervision of [DCJF] staff. Plaintiff claims that Aramark is responsible as well as [DCJF]. Plaintiff holds both Defendants responsible.

Plaintiff Claims that It is the Facility Employees and  
 Lunden to reinspect and Inspect Food Service and equipment  
 on Approximately July or August 2008 when Trays had holes  
 Inside of them and Spoil water was Falling on top of the Food  
 It was the Facility Responsibility to Inspect this trays.  
 That It was Atlantic County Justice Facility Responsibility  
 to Inspect this trays According to the weekly  
 Kitchen Inspection Report. Done by

- (A) Srgnt K. Marks
- (B) Srgnt D Cohen
- (C) Srgnt D. Kelsey.
- (D) Aramark Employee Joe Linnell.

Failed to properly Inspections.

According to N.J. A.C. 10A:31-10.9. Inspection of Food Service  
 Areas and equipment.

(a) A weekly inspection of all Food Service Areas and  
 equipment shall be Conducted by Administrative or dietary  
 Personnel

(b) A daily check of refrigerator and water temperatures  
 by Administrative or dietary Personnel shall be made.

(c) Written documentation that Food Service Facilities and

equipment meet established safety and protection standards and requirements shall be available for review

Plaintiff claims that the 172 trays with whole sides of them with rotten water was continuously happening since this employees failed to properly inspect.

Plaintiff also claims that the detainees who served the food in the pods, are detainees who are not approved or assign by the Administration or Aramark to handle food. That they had handle the food with out any supervision. According to N.J.A.C 10A:31-10.8 Personal hygiene of Food Service Personnel.

- (a) all Food Service Personnel shall maintain high standards of Personal hygiene and Comply with Federal, state and local laws and Regulations for Food handlers.
- (b) all Food handlers shall wash their hands upon Reporting

Plaintiff claims that Aramark has failed to provide proper nutritious food. Plaintiff claims that portions of food was missing, and many times detainees would protest and the officer would not tray the food being inadequate, and detainees would be transfer to other pods or Segregation. Plaintiff claims that in 2007 (28) Grievances was filed for Inadequate of Food Service.



Plaintiff Claims that the Population was Served with Incomplete Meals and dirty trays and dirty Containers. Plaintiff Claims that It is Armark's obligation and duty to Inspect the Cleanliness and Sanitation of this Food Service.

Armark Contract Requirements are as Follows:

a) A Supervisor continuously observed the tray line at the end point of assembly or Service Portions are continuously checked throughout Service for accuracy. Trays are checked for missing items and completeness of each meal. Each meal is neatly presented and free of spills and drippage.

b) Leftovers are served first if utilized at a meal. These should be noted as initially brought to the line on the Production sheet for the Service area.

Plaintiff Claims that left overs and time was Spilled But it was still served that Next day. Left over at times would be served.

C) Verification of workers who are ill or who have open wounds is provided on the Health Screening Section of the Production Sheet. These workers do not Process and Serve Food.

D) All workers wash hands wear hair restraints wear beard restraints wear and Plastic Gloves when handling Preparing or Serving Food. Partition is used to avoid a cross Contamination when wearing Plastic Gloves.

Plaintiff Claims That Inmates who Served the Food in The Pals does not Follow this Requirement or does not mark or The Facility Enforce this Requirement jeopardizing the Health and well being of the Population. Plaintiff Claims That The Inmates who Served the Food or not Assign or any Health Evaluation Are done to determine that this detainee can and may Served the Food.

(F) Conveyors steam tables and Service Areas are in good repair and clean.

According to N.Y. A.C. 10: A:31-10.5. Provides in Part. that "a sanitary space shall be provided for Group Dining.

Plaintiff Claims That the Dining Area at times are clean by Assign detainee that voluntary detainees.



Plaintiff claims that the Facility does not assign or designate detainees to clean the tables and chairs and eating area. Plaintiff claims that the tables were filthy and dirty.

According to N.Y.A.C. 10 A. 31-11.3 Provides those daily. Sanitation inspections are to be made of County Correctional Facilities to ensure compliance with applicable Sanitary Standards.

According to N.Y.A.C. 10 A. 51 10.2. Food Service Management. A staff experienced in Food Service management shall be designated to be responsible for Food Service management and operations within the adult Correctional Facility.

Plaintiff claims that the Warden and Aramark Correctional Service have failed to provide a clean and sanitize area to eat. Plaintiff claims that it is Warden and Aramark Correctional Service responsibility to check analysis trays of which any malfunction of this kind or any kinds.

Plaintiff claims that this Defendants fail to protect and fail to provide a sanitize clean suitable area to eat hot meal. That Aramark was aware as well that this Defendants was aware that the detainees who served the food should have been assigned by the administration or Aramark as medically cleared and to supervised to

... To Food Service as well.

Plaintiff claims that the Food Service was not appropriate as to Calories and that the Food was Inadequate. That the Knowledge of those Factual disputes must be left to the Province of an Appropriate Fact Finder *Despain v UPHOFF* 264 F.3d 965 (10th Cir. 2001) detainee has the right as Constitutional Right to be Free From Conditions of Confinement that is Sure or Very likely to Cause Illness and needless Suffering

Plaintiff claims that he Suffered Physically Injuries as the Consequences of the Food Service being Inadequate. Plaintiff claims that trays, Juice Containers were constantly dirty. Plaintiff claims that Atlantic County Justice Facility and Asramark Correctional Facility are required to Serve Food that is nutritious and prepare under clean Conditions *Rohles v Coughlin* 725 F.2d 12 (2d Cir 1993).

Plaintiff claims that Food, Sanitations Fails within Human Basic needs *Rohdes v Chapman* 452, U.S. 537, 546 (1981)

Plaintiff claims that the Court is required to consider as true all allegations in the Complaint and all reasonable inference that can be drawn there from *Pinker v Roche Holdings Ltd.*, 392 F.3d 361, 374, n.7 (3d Cir 2002) citing *Culburn v. Upper Derby Twp*, 838 F.2d 663, 665-66 (3d Cir 1988). Looking at the facts in the light most favorable to Duran, the must determine whether he can prove any set of facts consistent with his allegations that would entitle him to relief. *Hishon v King & Spalding*, 467 U.S. 69, 73 (1984) citing *Ponley v Gibson*, 355 U.S. 41, 45-46.

Plaintiff claims that his Eighth Amendment claim shall be granted.

D. Plaintiff claims that Aramark Correctional Services LLC  
violated Plaintiff Fifth Amendment Right of the  
U.S.C.A

Plaintiff claims that Aramark Correctional Service LLC claim fails within the Fifth amendment Right violation. The Fifth amendment has been interpreted as a "protection of the individual against arbitrary action of the Government." was procedural and substantive components. *Lombardi v Whitman*, 485 F.3d 73, 78 (3d Cir 2007) quoting *County of Sacramento v Lewis*, 523 U.S. 833, 845, 118 S.Ct 1708, 140 L.Ed. 2d 1043 (1998).

The Substantive Component protects the individual against "the exercise of power without any reasonable justification in the service of a legitimate governmental objective." Id. quoting *Lewis*, 523 U.S. at 846, 118 S.Ct 1708.

In order to establish a violation of a Right to Substantive Due Process, a Plaintiff must demonstrate that a government action was "so egregious, so outrageous, that it may fairly be said to shock the contemporary conscience." *Pena v De Pasco*, 432 F.3d 148, 112 (3d Cir 2005) (quoting *Lewis*, 523 U.S. at 847, 118 S.Ct 1708).

In the Prison System Context, "deliberate indifference" is enough to shock the Conscience because of "the luxury enjoyed by Prison officials in having to make unhurried Judgments upon the chance for repeated reflection." *Id.* at 113. Quoting Lewis 523 U.S. at 851, 118 S.Ct 1708.

Plaintiff Claims That There was 28 Grievances Filed, and Plaintiff had Filed Numerous of Grievances which Grievances and Complainant is away to show that Prison Official Knew about Arcamark Inadequate Food Service. See *Vance v Peters* 97 F.3d 987 (6th Cir 1996).

Plaintiff Claims that there was more Grievances Filed by Atlantic County Defense Counsel and Atlantic County Justice Facility has hidden this Grievances and Complaints. See Plaintiff Brief of Opposition of Summary Judgment, Attach Declarations and Statements of Detainees

Plaintiff Also Claims that Common Sense would Know that 60 to 65 detainees in a pod design for 16 detainees would not have enough tables and chairs for this detainees to sit and eat. That If the Administration wouldn't assign a detainee to clean the tables and chairs they would be unhealthy, dirty unsanitary

Plaintiff Claims That Arcamark Correctional Service is a Contractor to Atlantic County which is a Subdivision of the State of New Jersey (Section 1983) *Clark v Dogan* 83 N.J. 393, 400 (1986) 183 N.J. Super 137, 144 (App. Div. 1983) by its own terms provides redress only when States Employee Infringes These Right Secured by the Constitution and Laws of the United States. *Paul v Davis* 96 S.Ct 1155, 1160 (1976). *Smith v Spivey* 477 Fed 1040, 1143 (8th Cir 1973).

Plaintiff claims that the Injury and the deliberate indifference came from a Government Subdivision Employee's.

Therefore the Fifth amendment claim shall be Granted and to Proceed For trial.

E. Aramark Correctional Service LLC Violated Plaintiff Fourteenth Amendment of The U.S. CA

Plaintiff claims that Aramark Correctional Service LLC violated Plaintiff Fourteenth Amendment of The U.S. CA. by Failing to Provide adequate Nutrition Food Service.

In *Boring v Kozakiewicz* 833 F.2d 468 (3rd Cir 1987). The Third Circuit recognized that in regard to Providing Prisoner detainees with Such basic necessities as Food, Living Space and medical Care, the minimum standard allowed by the due Process clause is the same as that allowed by the Eighth Amendment For convicted Prisoner.

The Court should review If the Conditions amounted to Punishment see *Bell v Wolfish* 441 U.S. 520 (1979) whether there has been a violation of Due Process Clause of the Fourteenth Amendment *Hubbard v Taylor* 538 F.3d 229 231 (3rd Cir 2008).

Plaintiff claims that not Providing adequate Food, Clothing, shelter, and medical care, is a violation of the 8th and 14th Amendment. The Constitution requires that Prisoners be provided "reasonably adequate Food Service". *Hamm v. DeKalb County* 774 F.2d 1567, 1575 (11th Cir 1985) See also *Farmer* 511 U.S. at 832, 114 S.Ct. 1970.

Plaintiff Fourteenth Amendment Claim is premised upon his having been Served cold meals during a forty five day period 2007 which cause Plaintiff to be Consistently Sick. Problems with Bowels Movement, Plaintiff also claims The Food was Inadequate because it was diluted, watery, adulterated, no taste.

Numerous of The Food was Spoil. But there was a time, where Plaintiff Suffered From E Coli Poison on Approximately August or September 2008

Plaintiff claims The Portion of The Food was very Limited, Less than the one Required by minimum Standard. Incomplete meals. See Plaintiff brief of opposition or Summary Judgment

Plaintiff claims That Food being Served by a detainee without being Medically Cleared. Tables and chairs and mess hall area being unsanitary. Plaintiff claims That they are Forced to eat in the cells by a toilet or on the floor because There is only 16 chairs and 4 tables.

Plaintiff claims That Without a Question There is Certain Evidence Missing which it was hidden, and Conceal by County Asst Counsel James T. Ogawa. Plaintiff claims That through The trial witnesses, as Robert shawyer III inmate, Correctional officer George Hebert, Jamell chin inmate, detainee who suffered and Experience The E-coli situation and The officer who wrote The Complaint.

In addition Plaintiff claims That wooden Gary Merline did not provide Copy of [State Permission] for the Food Service of Three Cold meals, per day for 45 days.

IF The Court needs Copy of the Sillcells, and Doctor notes, in order to Prove That Aramark Counsel was not disclosing Full disclosure of evidence Feel Free to Request Such Evidence From The Plaintiff.

Aramark Counsel Provides even more Information For This Court to determine The Patterns of Aramark Correctional Facility Providing Cold meals, deficient Breakfast.

Plaintiff claims That according to N.S. AC 10A:10.5 Provides in part that Two or three meals Provided shall be hot meals.

Plaintiff claims That Aramark never Followed N.S. AC 10A:31-10.3 menus.

- a) menu evaluations shall be Conducted and maintained at least Quarterly by the adult County Correctional Facility Food Service Supervising STAFF to verify adherence to Nationally recommended basic daily Serving.
- b) The Signature of a Registered dietitian on the menus shall indicates official Approval of the nutritional adequacy of Food Served to Inmates within the Facility
- c) All menus including Special diet shall be Planned dated and available For review at least one week in advance
- d) In any Case when a Food Substitution is made. The Food That is Substituted shall be of Equal nutritional value and a notation of The Substitution shall be made on the menu.
- e) A File of tested recipes Adjusted to Prepare the Number of MEALS Appropriate to the size of The Facility should be maintained on the Premises of The Facility.

According to N.T.CA 10A:51-10.7 medical examination of Food Service Personnel.



According to NSAC 10A: 21-10.1 Prisons that County Correctional Facilities shall provide nutrition to detainees and inmates that is consistent with "nationally recommended Food allowances as stated by the National Academy of Sciences

Plaintiff claims That the Food being Served at [CCTF] Fails to meet the Nationally recommended Food Allowances as stated by the national Academy of Science due to the large Population of Inmate and Food being diluted, adulterated or watered down to Serve the excessive number of Inmates. at the [CCTF] by Reducing the Cost of the Food being Served to the Population

Prisoners has Failed to provide Consistently Perform such Services such as Cleaning, Clean Food, Preparations Facilities dayrooms, and Cleaning Common Areas. of which Plaintiff and other detainees would sit and eat there - three meals for days

Plaintiff Claims That the Food has result to be Contaminated Food That has transmitted of illness including E-Coli gastrointestinal conditions. Plaintiff has personally been affected by such Pain discomfort and Contaminated Food. See Plaintiff Brief of opposition of Summary Judgment

An Inmate is Entitled to a healthy habitable environment That Includes "Providing nutritionally Adequate Food that is Prepared and Served under Conditions which do not present an immediate danger to the health and well being of the ~~Inmate~~ who Consume it French v. Owens 777 F.2d 1250, 1255 (9th Cir 1985)

Plaintiff claims That Prisons are Required to Serve Food that is nutritious and Prepared under Clean Conditions Robles v. Coughlin 225 F.2d 12 6d Cir 1983).



Plaintiff Claims That For 21 month of Such Conditions no Court should Review Such matter on the prolong and time of Constantly Spoil Food. Cold meals. Inadequate Food. watery down Food. Defense Counsel does not Reveal all discovery to This Court. [ACTF] Discovery pg 378 Food being Inadequate for 45 days. [ACTF] Discovery pg 390 Food being diluted.

Plaintiff Claims That This Inadequate Food Caused bad Indigestion Review [ACTF] discovery pg 544 medical Report. Plaintiff having Problem with his bowel movements. Plaintiff was Provided with medication Review [ACTF] discovery pg 533.

Plaintiff Claims That the time Frame of This Conditions does need to be Review *Barney v Palsipher* 143 F.3d 1299, 1311 (10th Cir 1998) 21 month of This Conditions is a Question of Facts.

Plaintiff Claims That the Spoil and Inadequate Food Service Cause Risk and Injuries See *Helling v McKinney* 509 U.S. 35 (1993)

Plaintiff Claims That Such Service of Inadequate Food Service is done maliciously because it Forces the detainee to Purchase Commissary at Keefe Commissary That has a Contract with the County of Atlantic and That of no Contract is 40% of each Purchase From each detainee Goes to Atlantic County.

Plaintiff Claims That [ACTF] warden is Also Responsible Warden and Defendant Gary Merline Since he was notified of the Inadequate Food Service see [ACTF] discovery pg 377, 384. sl.

Plaintiff claims that the Inadequate Food Service is Purposely done with the Intention to Force the detainees to Purchase Food in Keefe Commissary. Providing Constantly Spoil Food. Incomplete meals.

Three Cold meals. Watery down Food Food have no taste no salt. no Peppers. is not negligence, the Conduct is deliberate it Inflicts and Inflicted the Plaintiff Aramark has Fail in deliberate Indifference to Plaintiff Health, nutriest. nutritional and dieting meals

Common Sense will determine that adulterated watery down Food would bring down the 3,000 Calories of Food Resment. and Low of Proteins, which Plaintiff claims a Body with Low Calories and Protein is Constantly Sick.

Plaintiff claims that he would be Constantly Sick and would go to the medical department to Ask For vitamins because Plaintiff was always Constantly weak and Sick.

Plaintiff claims that [ACJF] underlines Cases Merline and Aramark Fail to provide Adequate Food Service that [ACJF] Fail to Properly Inspect the Kitchen, and trays of which such trays where Food are served has holes in them where rotten water would fall into of it. and would affect Plaintiff and the Population.

Plaintiff is not provided with a A Sanitary Space as required by N.J.A.C. 10: A-31-10.5. The Dining Rooms are unsanitary

Plaintiff claims that the facility of CECTS and Aramark did not follow or give any menu to the detainees. Plaintiff claims that Aramark would serve the food as they thought that it would be okay it didn't matter if the food was nutritious or not.

Plaintiff is requesting if the Court finds that there is not enough evidence at this time, to dismiss the claim without prejudice. Plaintiff believes that in trial witness will reveal that that such incident took place and that he were all seen by the medical department staff inside the pod unit M-Left.

Plaintiff claims that the conditions was egregious so atrocious that it shock the contemporary see United Artists The Atre Circuit Inc. v WTP of Washington 316 F.3d 392 (3d Cir. 2003)

Liability for negligently harm is categorically beneath the threshold of Constitutional due process intended to injury in some way unsustained by Governmental Interest "Are those" most likely to rise to the conscience shocking level for a similar case. Punitive damage was awarded for violations of Constitutional Rights *Hubbard v Taylor* 279 F.3d 150, 187 (3d Cir. 2005)

Plaintiff claims that the 14th Amendment prohibits unnecessary and wanton infliction of pain thus for denying punishment that is so tally without Penological Justification that it results in the gratuitous infliction of pain always violates Contemporary Standard of decency and need not to produce serious injury in order to violate Constitutional Right *Hudson v McMillan* 12 S.Ct 995 (1992) moreover Physical Injury need not result for the punishment to state a cause of action for the wanton infliction or psychological pain is also prohibited. *Hudson v McMillan*.

"The Question of whether the Pro-se Plaintiff suffered a Compensable physical mental and emotional Injury is a Question of Fact best left for a Jury to decide see William v. Waldman 291 NY Super 600, 604, 606. (App Div 1976)

Defendants are not Entitled to Qualified Immunity. Plaintiff claims that the Defendant actions was reasonable to have known this his other actions were unconstitutional in light of Inadequate Food Services clearly establish by law and the Information of official possessed. See Anderson v. Creighton 483 U.S. 635-641. 107 Sct 3034 (1987)

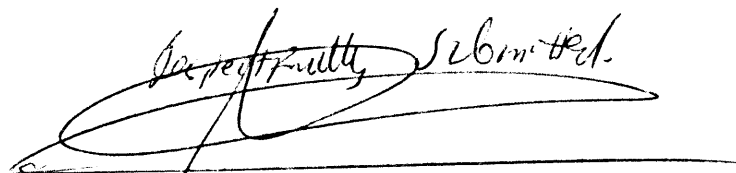
Plaintiff claims that Ramoth Correctional Services shall be held liable in their official capacity and Individual capacity. (ACFPI) warden Gary Melina shall be held liable in his official and Individual capacity.

Plaintiff brief of opposition of Summary Judgment should be Granted.

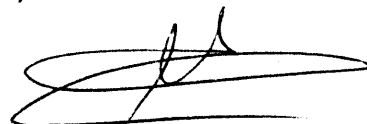
### Conclusion

For the mention reasons. it is respectfully requested that the Court Grant Plaintiff MIGUEL Duran. Brief of opposition for Summary Judgment

Filed 12/4/10

Respectfully Submitted.  
  
 MIGUEL Duran

I MIGUEL Duran duly sworn on December 9, 2010 that the above statement is true and correct.  
 Dated 12/4/10



Affidavit of Service.

I, MICHEL Dugan duly sworn on December 2, 2010 that I am over the age of 18, and that a brief of opposition of summary judgment has been filed with United States District Court Camden NJ, and the following parties were served.


Peter S. Cuddihy Esq.  
P.O. Box 90022  
Westmont, New Jersey 08108.

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Kendy D. Barish Esq.  
Heber Collagher Simpson  
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2000 Market Street 18th Floor  
Philadelphia PA 19103.

I MICHEL Dugan duly sworn that the above Affidavit is true and correct.

Signed 12/9/10

  
MICHEL Dugan pro se

*Emm M. Deane 18/1407*  
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Honorable Renee Bump  
US District Court  
POB 2797  
Camden, NJ 08101